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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205326.2 DATE: December 14, 1982

MATTER OF: Information Consultants, Inc.

DIGEST:

1. Agency's interpretation of a written ground rule concerning evaluation of benchmark to determine which teleprocessing services multiple award schedule contractor is least costly is upheld where circumstances indicate it to be the only reasonable interpretation. Although the protester proffers some of the contracting officer's notes of discussion of the ground rules to support its interpretation, the notes are inconclusive. The protester thus fails to meet its burden of proving the agency's interpretation was not intended by the parties.

2. Protest by teleprocessing services multiple award schedule contractor that the Navy should let the Defense Supply Service order services for it under the same delivery order as other agencies, to take advantage of reduced bulk storage rates for large quantities, lacks merit. The protester participated in a Navy competition which it understood would provide the basis for the Navy to issue its own order, and the suggested approach is advantageous only because the protester reduced its schedule price specifically for the Navy's competition, so that evaluation on other than the rate that expressly applied to the competition clearly would be unfair.

Information Consultants, Inc. (ICI) protests the Navy's issuance of delivery order No. N00600-82-F-1317 to IBIS Corporation under the General Services Administration's (GSA) multiple award schedule contract (MASC)

for three months of commercial teleprocessing services. The Navy purchased the services to support its Information Requirements Control Automated System (IRCAS), a software system which processes the information contained in numerous Department of Defense forms, reports and directives. IBIS was selected for award after the Navy conducted a benchmark to determine which MASC afforded the lowest cost alternative. ICI contends that the Navy did not adhere to an evaluation ground rule that allegedly prohibited the consideration of "conditional price reduction amendments," in which the MASC contractor agrees to lower its Government-wide MASC prices if awarded a particular requirement. The protester also complains that in evaluating ICI the Navy failed to apply the most favorable bulk storage rate available from ICI.

We deny the protest.

Background

ICI developed the IRCAS software under a contract with the Army's Defense Supply Service-Washington (DSS-W), and later provided teleprocessing services to various Department of Defense activities including the Navy under purchase orders issued by DSS-W. The orders were issued against the MASC. IBIS approached the Navy in May 1981 and asserted it could provide teleprocessing services at significantly lower rates than ICI. By December, IBIS had demonstrated to the Navy's satisfaction that it could meet the Navy's teleprocessing services requirement at an estimated cost of less than $50,000 under its MASC, compared to projected costs of approximately $192,000 under ICI's. Therefore, the Navy decided to conduct a competition for its requirement.

While preparing for a competitive procurement, the Navy decided to enter into the three-month contract in issue, based on a limited competition between ICI and IBIS. The basis for the competition was a benchmark, or a test of each firm's applications of certain IRCAS functions. By applying each firm's MASC rates to the results of the benchmark, the Navy intended to evaluate which firm was least costly.

The Navy attempted several benchmarks culminating in a benchmark on February 16, 1982 and the subsequent award to IBIS. IBIS was low on the basis of the rates offered in its conditional price reduction amendment. ICI had reduced its MASC rates approximately 84 percent by an amendment

effective January 26, the date of an unsuccessful benchmark. ICI's price reduction rendered ICI low as of January 26. IBIS, learning of that fact (such price reductions are a matter of public record), submitted its conditional price amendment to GSA, which approved the amendment on February 2. ICI was not aware of the conditional price amendment until the Navy informed it of the evaluation results. (These amendments are not disclosed until a competition is completed.)

The ground rules for the February 16 benchmark were established at a meeting on February 12 attended by the contracting officer and representatives of both ICI and IBIS. At the meeting the contracting officer presented a memorandum that included the following rules:

> "2. No amendments not submitted, approved and in effect on 9 Feb. 82 will be considered or evaluated under this benchmark.
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> * * * * *
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> "5. All costs will be in accordance with the current MASC for the tasks represented by the benchmark (ref. 2 above)."

Regarding storage costs, the memorandum stated that such costs would be evaluated based on 27.5 million characters for four months, the Navy's estimated requirements.

The Navy evaluated IBIS to be the lowest cost alternative based on the conditional price amendment to IBIS's MASC.

Protest

The protester contends that the conditional amendment was not "in effect" until IBIS received the delivery order, and therefore did not meet the requirements of ground rule 2. ICI also contends that the contracting officer agreed at the February 12 meeting that no conditional price amendents would be considered.

Nowithstanding this aspect of the protest, ICI argues that it would still have been low if the Navy had evaluated the bulk storage rate by aggregating its requirements with those under DSS-W's order with ICI since ICI's MASC contains a reduced rate for a large volume of work. Instead, the Navy used the rate applicable to its requirement only.

Analysis

The Navy's interpretation of the ground rules as permitting the consideration of conditional price amendments received and approved by GSA on or before February 9 is reasonable under the circumstances of this case. Indeed, except for some of the contracting officer's notes taken at the February 12 meeting, the circumstances indicate that the Navy's interpretation is the only reasonable one.

The record shows that the parties, including ICI, were well aware of the availability of conditional price amendments as a usual method of effecting competition. Conditional price amendments are authorized by the MASC. The Navy described the mechanics of these amendments in its report on the protest:

> "The price reduction starts on the date of selection. For the conditional amendment to be effective, it must be accepted by GSA. Although the MASC prices are published for each vendor, conditional amendments remain secret until the results of the evaluation of offers are completed. This is virtually the only effective way to secure price competition under a MASC."

While it is true that conditional price amendments do not affect the contractor's MASC prices until the date of selection, they are generally "in effect" for evaluation purposes, according to GSA, if they are submitted and approved before a certain deadline. (There also are general price modifications, which simply reduce the prices for all Government users from the effective date of the amendment; ICI accomplished its January 26 price reductions through such a modification.)

The intent of ground rule 2 appears to have been to establish a common cut-off date or deadline for the submission of price reductions in whatever manner. Establishing a common basis for competition is a principal goal of any Federal competitive procurement and is a requirement of the MASC. The ground rules must be interpreted in that context. We believe that if the parties had intended to eliminate a usual method of achieving competition, through conditional price amendments, they would have made that intention explicit in writing. The ground rules, however, do not expressly address conditional price amendments. In fact, both the Navy and IBIS clearly understood the ground rules to permit conditional price amendments submitted and approved on or before February 9.

ICI submitted to this Office some scrawled notes taken by the contracting officer during the February 12 meeting, and argues that these notes bolster its interpretation of the ground rules. The notes include the statement, "Conditional price came up/all agreed no conds (See last written note)." The last written note states, "validate charges in effect that day * * * 2/9 amends. O.K. * * * validation/can be given."

The Navy did not submit an explanation from the contracting officer of the ground rules or her notes because she left the Navy shortly after this procurement. IBIS, of course, contends that there never was an agreement to exclude conditional price amendments, and both IBIS and the Navy consider the written terms of the contracting officer's ground rule memorandum to represent the agreement of the parties.

Although these notes could be interpreted to indicate an agreement that no conditional amendments would be evaluated, we believe the notes are ambiguous. The notation "no cond. amendments" might refer to conditional amendments submitted and accepted by GSA after February 9, consistent with the referenced statement in the last written note, "2/9 amends O.K." Moreover, the notes were prepared in too hasty and fragmentary a manner to be of much probative value at all. They also state, "No amendments 2/9 or before," which the parties clearly did not intend. In any event, there is nothing in the record to indicate the contracting officer's notes reflect the final understanding of the parties regarding the written conditions.

Considering all the circumstances, we believe the Navy properly considered IBIS's conditional price reduction. We do not believe that ICI has demonstrated convincingly that the parties intended for the Navy to do otherwise. In this regard, we point out that the protester has the burden of affirmatively proving its case. Line Fast Corporation, B-205483, April 26, 1982, 82-1 CPD 382. ICI has not met its burden here.

The remaining protest ground concerns the Navy's refusal to evaluate ICI's bulk storage rate by aggregating the Navy's requirements with DSS-W's. GSA has advised us that since the Navy intended to issue its own delivery order for teleprocessing services under a MASC, it would not have been proper for the Navy to aggregate its storage use with DSS-W's. While ICI does not dispute this fact, it does contend that the Navy should have decided not to issue

its own order and to continue meeting its requirements through DSS-W. In this manner the Navy would be able to take advantage of the lower storage rate. In effect, the protester contends that the Navy should have canceled its selection process since the evaluation showed the Navy would incur less costs by aggregating its requirements with DSS-W's.

We believe this position lacks merit because all of the parties understood the selection process and its ground rules to provide a basis for the Navy's issuing its own delivery order. Moreover, ICI's position that aggregation provides the lowest cost alternative is based on the January 26 price reduction. Arguably, ICI never would have reduced its MASC rates if it had not been for the competitive selection process. It would be unfair then to permit ICI to be evaluated on a different basis than that established for the competition, that is, to evaluate its MASC price as reduced for the Navy competition and its bulk storage for DSS-W purpose.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States